

# **EXHIBIT “A”**

mt042909.txt

0001

1 IN THE UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 \*\*\*\*\*  
4 IN RE:  
5 Methyl Tertiary Butyl Ether  
6 ("MTBE") Products Liability MDL NO.  
7 Litigation 1358 (SAS)

8  
9 In Re: City of New York  
10 \*\*\*\*\*

11  
12 CONFIDENTIAL (Per 2004 MDL 1358 Order)

13  
14 VIDEOTAPED DEPOSITION OF MARTIN R. TALLETT  
15 Wednesday, April 29th, 2008  
16 10:08 a.m.

17  
18 McDermott Will & Emery, LLP  
19 28 State Street  
20 Boston, Massachusetts

21  
22  
23 REPORTED BY:  
24 Maureen O'Connor Pollard, RPR, CLR, CSR

0002

1 APPEARANCES:  
2 FOR THE CITY OF NEW YORK:  
3 BY: WILLIAM PLACHE, ESQ.  
4 NEW YORK CITY LAW DEPARTMENT  
5 OFFICE OF THE CORPORATE COUNSEL  
6 100 Church Street  
7 New York, New York 10007  
8 212-788-1574  
9 wplache@law.nyc.gov

10  
11 FOR EXXON MOBIL CORPORATION:  
12 BY: BRIAN A. MCGILL, ESQ.  
13 MCDERMOTT WILL & EMERY, LLP  
14 600 Thirteenth Street, N.W.  
15 Washington, DC 20005-3096  
16 212-547-5400  
17 bmcgill@mwe.com

18  
19 FOR GULF OIL LIMITED PARTNERSHIP:  
20 BY: ANTHONY A. ORLANDI, ESQ.  
21 GOODWIN PROCTER LLP  
22 53 State Street  
23 Boston, Massachusetts 02109  
24 617-570-1000  
aorlandi@goodwinprocter.com

25  
26 FOR SUNOCO, INC. AND SUNOCO, INC. R&M:  
27 BY: NESSA E. HOREWITCH, ESQ.  
28 BEVERIDGE & DIAMOND, P.C.  
29 1350 I Street, NW  
30 Washington, DC 20005-3311  
31 202-789-6000  
nhorewitch@bdlaw.com

32  
33 FOR COASTAL EAGLE POINT OIL COMPANY and EL PASO  
34 MERCHANT ENERGY-PETROLEUM COMPANY:  
35 BY: DAWN A. ELLISON, ESQ.

mt042909.txt

20 HOWREY LLP  
 21 1299 Pennsylvania Avenue, NW  
 22 Washington, DC 20004-2402  
 23 202-383-6848  
 24 ellisond@howrey.com

24 william slater, Videographer

0003

1 PRESENT VIA SPEAKERPHONE:  
 2 FOR VALERO ENERGY CORPORATION:  
 3 BY: ANDREW M. TAYLOR, ESQ.  
 4 BRACEWELL & GIULIANI, LLP  
 111 Congress Avenue, Suite 2300  
 Austin, Texas 78701  
 512-494-3601  
 andy.taylor@bgllp.com

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

0004

## INDEX

	EXAMINATION	PAGE
1	MARTIN R. TALLETT	
2	BY MR. MCGILL	7
3	BY MS. ELLISON	177
4	BY MR. PLACHE	186
5	BY MR. MCGILL	187
6	BY MS. HOREWITCH	188

9

## EXHIBITS

	NO.	DESCRIPTION	PAGE
10	Exhibit 1	12/19/08 expert report of Martin R. Tallett.....	38
11	Exhibit 2	2/6/09 expert rebuttal report of Martin R. Tallett...	70
12	Exhibit 3	3/16/09 expert market share report of Martin R. Tallett...	118
13	Exhibit 4	Document titled NYMEX New York Harbor Ethanol Contract..	125
14	Exhibit 5	Form EIA-782C.....	146
15	Exhibit 6	EIA-782C instructions.....	146
16	Exhibit 7	Document titled EIA-782C Exclusionary List	
17		Instructions.....	155

0005

1	Exhibit 8	2/13/09 expert report of Michelle M. Burtis.....	178
---	-----------	--	-----

2

mt042909.txt

Exhibit 9 6/28/07 letter..... 180

0006  
1 P R O C E E D I N G S

2  
3 MARTIN R. TALLETT,  
4 having been satisfactorily identified by photo  
5 identification, being first duly sworn, was  
6 examined and testified as follows:

7  
8 THE VIDEOGRAPHER: We are now on the  
9 record.

10 My name is Bill Slater, I am the  
11 videographer of Golkow Technologies,  
12 Incorporated, 1 Liberty Place, 1650 Market  
13 Street, 51st Floor, Philadelphia, PA, 19103.

14 Today's date is April 29th, 2009, the  
15 time is 10:08 a.m..

16 This video deposition is being held at  
17 McDermott, Will & Emery, 28 State Street,  
18 Boston, Massachusetts in the matter of In Re:  
19 MTBE Products Liability Litigation, MDL Number  
20 1358 (SAS), for the United States District  
21 Court, Southern District of New York. The  
22 deponent is Martin R. Tallett.

23 Will the questioning and defending  
24 attorney please identify themselves for the

0007  
1 record.

2 MR. MCGILL: Brian McGill from  
3 McDermott, Will & Emery representing Exxon  
4 Mobil.

5 MR. PLACHE: William Plache, New York  
6 City Law Department.

7 THE VIDEOGRAPHER: The court reporter  
8 is Maureen Pollard. Will she now swear in the  
9 witness.

10  
11 MARTIN R. TALLETT,  
12 having been satisfactorily identified by photo  
13 identification, being first duly sworn, was  
14 examined and testified as follows:

15 DIRECT EXAMINATION

mt042909.txt

You can answer.

BY MR. MCGILL:

Q. You disagreed with Mr. O'Brien's statements about 782C?

A. I disagreed with his view that the information is of little use, which was really what he was asserting.

Q. And what about Mr. Montgomery's comments?

A. Broadly similar, he made the same assertion, but I think he used somewhat more muted language as I mentioned.

Q. We discussed -- well, we mentioned your expertise earlier today, and we discussed it extensively in our last deposition.

Are you relying on the same expertise here as you were in Suffolk?

A. Yes.

Q. Same areas of expertise?

A. Yes.

Q. And what do you consider those to be?

A. They sent around what is sometimes referred to as refining economics. Broadly the areas where we operate are where various aspects that relate to the refining and supply system all come together. So the technology of refining and refining processes, products, blending, specifications, thus product quality, legislative aspects, regulatory aspects which cover product quality and other regulations, market aspects which cover supply, refining activities, refining economics, crude oils and non-crude oils, products, markets, everything that interplays with those areas and the way they inter-react.

Q. When did you found EnSys?

A. Originally in the UK in 1980, and then since 1982 here in the USA.

Q. And what does EnSys do?

A. What do we do. We spend our time assisting usually large organizations, organizations with a broad remit or interest, by

which I mean often it's national, regional or global, we assist those kinds of organizations with often fairly big picture questions, and so those often relate to how new developments are likely to alter the look and face activities and economics of the refining sector and oil markets within that.

The focus can be more narrow geographically, it can be more narrow in terms of focus on particular fuel types, for instance marine fuels is one example, it has included assessments of the impacts of carbon regimes as they come more to the fore. And as part and parcel of that, we do, as we're doing here today, undertake expert witness work, although that does not comprise the majority of our work.

Q. We talked earlier about several cases, Suffolk County, we talked a little bit about New Hampshire, and we talked about the City of

mt042909.txt

0053

1 MR. PLACHE: Objection to the form.

2 A. This is getting to the limits of my  
3 expertise, and it's not an area that I would  
4 testify on. I have a general knowledge, but not  
5 a rigorous detailed knowledge.

6 BY MR. MCGILL:

7 Q. Do you have any knowledge on this  
8 point?

9 A. Well, yes. There's -- the concerns  
10 that are raised at times are that when you blend  
11 an ethanol containing gasoline with a  
12 non-ethanol containing gasoline and therefore  
13 dilute the ethanol content, that raises the  
14 effective RVP of the ethanol, making the  
15 gasoline somewhat more volatile.

16 A second concern that has been put  
17 forward, I think it's existed more in the past  
18 now, is over how ethanol containing gasoline  
19 interacts with seals in tanks.

20 Q. And what's your understanding of the  
21 concern about how ethanol reacts with seals?

22 A. Again, I have an outline knowledge  
23 that it can attack seals.

24 Q. And by "seals," you're referring to

0054

1 seals in underground storage tanks and related  
2 equipment?

3 A. Yes.

4 Q. In answer to one of my earlier  
5 questions a minute or two ago, you suggested  
6 that we may be reaching the edge or the limit of  
7 your expertise.

8 what did you mean by that?

9 A. I meant that my expertise covers  
10 primarily refining and related questions, but  
11 once one gets down into the retail end of the  
12 business, that is not an area where I have  
13 direct expertise, nor have I been retained to  
14 testify in that area.

15 Q. What do you understand you've been  
16 retained to testify in? What area do you  
17 understand you've been retained to testify in?

18 A. Essentially in the area of what I  
19 would term refining economics.

20 Q. Okay. Over the last few questions we  
21 talked about a number of concerns relating to  
22 the use of ethanol. We've also talked earlier  
23 this morning about the supply cost differences  
24 as outlined both in your first report as well as

0055

1 your prior opinions in Suffolk.

2 Other than those differences, or other  
3 than those characteristics I should say, do you  
4 believe that MTBE, the use of MTBE in RFG  
5 provided any advantage to refiners as opposed to  
6 the use of ethanol in RFG?

7 MR. PLACHE: Objection to the form.

8 A. I in my Suffolk report actually  
9 outlined the factors that I felt refiners would  
10 have considered at the time they took the  
11 decisions regarding MTBE versus ethanol, and so  
12 I believe there I outlined a number of factors.

mt042909.txt

13 BY MR. MCGILL:

14 Q. Do you recall any as you sit here?

15 A. Do I know any of those factors?

16 Q. Yes.

17 A. Well, one is that we've alluded to by  
18 looking at costs is the higher volatility of  
19 ethanol.

20 A second that we've just discussed is  
21 its particular distribution requirements.

22 A third that I believe I referred to  
23 was that in staying with -- sorry, in selecting  
24 MTBE, refiners thus really maximize their market

0056

1 share because they weren't handing over, as it  
2 were, part of the market to ethanol producers.

3 Those were some of them that I recall.

4 Q. Let's talk for a moment about the  
5 first one you mentioned, the higher volatility  
6 of ethanol. What do you mean by that?

7 A. There are controls on the volatility  
8 of gasoline so that it does not evaporate too  
9 quickly, especially under high temperatures,  
10 ambient temperatures, and so it combusts  
11 correctly in the engine. And volatility is most  
12 often characterized in terms of the so-called  
13 Reid Vapor Pressure, RVP, that's the property  
14 that people most commonly focus in on. And  
15 ethanol has higher RVP than MTBE in that regard,  
16 and it's higher than the vapor pressures levels  
17 one would typically wish to blend to for the  
18 gasoline, so the refiner has to compensate for  
19 that.

20 Q. And how does a refiner compensate for  
21 that?

22 A. Generally in producing RBOB for  
23 ethanol, that RBOB needs to have a lower vapor  
24 pressure than it would have if MTBE with blend

0057

1 stock, the oxygenate. That requirement applies  
2 predominantly in the summer, though, when RVP  
3 standards are tighter.

4 Q. And what does that mean for a refiner  
5 in terms of cost?

6 A. It means incremental costs.

7 Q. It means additional incremental costs  
8 for ethanol?

9 A. Versus using MTBE?

10 Q. Yes.

11 A. Yes.

12 Q. Okay. We discussed the second topic  
13 that your earlier answer brought up, the  
14 particular distribution requirements, I think we  
15 discussed pipelines a few minutes ago.

16 Were there any other distribution  
17 requirements that would be -- that would provide  
18 an advantage to using MTBE versus ethanol?

19 A. Beyond what we talked about?

20 Q. Beyond what we talked about.

21 A. Not that come to mind.

22 Q. Okay. Your third characteristic that  
23 you mentioned was in selecting MTBE refiners, I  
24 believe you said were maximizing their market

0058



mt042909.txt

1 share.

2 Do you recall that answer?

3 A. Yes.

4 Q. What did you mean by that?

5 A. What I meant was that if a refiner  
6 could produce MTBE internally, it would mean he  
7 would have to buy methanol as a feed stock for  
8 that, so that would come from a third party, but  
9 that would still mean that more volume of total  
10 gasoline was produced directly within his system  
11 than if he elected to use and buy ethanol which  
12 would generally come out of the agricultural  
13 sector.

14 I believe I also alluded to the fact  
15 that there are often close links between the  
16 petroleum and petrochemical sectors and  
17 companies, and so purchasing from a  
18 petrochemical company of either methanol or  
19 merchant MTBE could mean that you're actually  
20 purchasing from an affiliate, and that in its  
21 own way maintains your market share.

22 Q. Have you analyzed the specific costs  
23 associated with purchasing methanol and  
24 manufacturing MTBE versus purchasing ethanol and

0059 manufacturing RFG with ethanol?

1 A. Sorry, have I analyzed them?

2 Q. Yes.

3 A. No, we've not in the course of this  
4 proceeding sat down and done our own separate  
5 analysis, no.

6 Q. The scenario you outlined in, I think,  
7 the last question and answer where a refiner  
8 makes MTBE internally, is that typically  
9 referred to as a captive plant?

10 A. Yes.

11 Q. Okay. And the economics of running a  
12 captive plant would depend on what factors?

13 A. They would depend on the availability  
14 of a suitable supply stream of isobutylene,  
15 because to produce MTBE you react methanol with  
16 isobutylene. And so refineries, say, with cat  
17 crackers often have available isobutylene.

18 Q. And would operating a captive plant as  
19 we have been discussing over the last several  
20 minutes, would that provide a refiner with  
21 greater control over additive supply than  
22 purchasing ethanol from a third party?

23 MR. PLACHE: Objection to form.

0060 1 A. That arguably would. I believe that  
2 may have been one of the factors I also alluded  
3 to in the Suffolk report.

4 BY MR. MCGILL:

5 Q. We should probably clarify one item.  
6 We have been talking about  
7 reformulated gasoline during the course of this  
8 deposition. I believe when we began this  
9 deposition we specifically talked about Phase I  
10 reformulated gasoline as Professor Stavins used  
11 the term.

12 Do you recall that discussion?

13 A. Yes.



mt042909.txt

15 developed for Phase II RFG, do you believe  
16 ethanol containing RFG was competitive relative  
17 to MTBE containing RFG in the Northeast?

18 A. The short answer is no, I never said  
19 it was.

20 MR. MCGILL: I'm told we have two  
21 minutes on the tape. Why don't we break at this  
22 point.

23 Do you want to take five minutes?

24 THE VIDEOGRAPHER: This is the end of

0066 1 tape number one. The time is 11:28. We're off  
2 the record.

3 (Whereupon, a recess was taken.)

4 THE VIDEOGRAPHER: This is the  
5 beginning of tape number two. We're back on the  
6 record. The time is 11:45.

7 BY MR. MCGILL:

8 Q. Mr. Tallett, before the break we  
9 talked extensively about your first opinion as  
10 expressed in the December 19th, 2008 report.  
11 I'd like to move on to the second opinion. And  
12 I'll just read the summary of it in the record.  
13 "2. Professor Stavins was incorrect to claim  
14 that the form of the EPA Phase I simple model  
15 effectively precluded using ethanol in RFG from  
16 1995 through 1999. On the contrary, ethanol was  
17 used extensively in Phase I RFG under the simple  
18 model."

19 Tell me why Professor Stavins was  
20 incorrect.

21 A. Yes, going back to the original  
22 Stavins report where he argued that widespread  
23 use of MTBE was anticipated and that ethanol  
24 was, the way I interpreted his report,

0067 1 effectively unusable under Phase I RFG because  
2 of the absolute standards for RVP that applied  
3 under Phase I, and I interpreted Professor  
4 Stavins as claiming in effect that ethanol was  
5 unusable under Phase I and therefore the only  
6 practical solution was MTBE. So what I wanted  
7 to do was to examine the extent to which that  
8 stood up. And the section of the report here  
9 addresses my comments and reactions to Professor  
10 Stavins's assertions.

11 Q. And you state in this report that  
12 ethanol containing MTBE was, in fact, used  
13 during EPA Phase I, is that correct?

14 A. Yes.

15 Q. Do you know where it was used?

16 A. In the midwest.

17 Q. Do you know if it was used elsewhere?

18 A. It was used, I believe, in Kentucky,  
19 well, that's also part of the midwest. But it  
20 was not, to my knowledge, used outside the  
21 midwest.

22 Q. Why was that?

23 A. Again I would say, going back to what  
24 we were talking about earlier, ethanol had a

0068 1 kind of natural advantage in the midwest.

2 Q. For a number of reasons we've

mt042909.txt

3 previously discussed?

4 A. Yes.

5 Q. Okay. Is your opinion in this portion  
6 of the report, I will refer to it as opinion  
7 two, is your opinion two from your first report  
8 limited to the technical parameters of ethanol  
9 as opposed to the economic?

10 A. Yes, that's primarily the focus was  
11 the technical questions.

12 Q. So are you saying that it was simply  
13 possible to use ethanol to satisfy the Phase I  
14 standards?

15 A. Yes.

16 Q. Okay. In this part of your report  
17 you're offering no opinion relative to the  
18 economics of doing so?

19 A. Correct.

20 Q. Okay. From the technical side, what  
21 would a refiner have to do to use ethanol?

22 A. In RFG?

23 Q. In Phase I, I think it's Phase I RFG  
24 is what your discussing.

0069 1 A. Yes. He would have to produce a  
2 so-called RBOB that -- for the summertime which  
3 is when the tighter RVP standards apply, 7.2 and  
4 I believe 8.1 psi. He would have to produce an  
5 RBOB that when blended with ethanol generally at  
6 ten percent would comply with the other  
7 requirements for the gasoline including Phase I  
8 limits, but particularly with the RVP limit.

9 Q. And are you familiar with the RVP  
10 limits with respect to Phase II RFG?

11 A. They are -- there's no hard and fast  
12 RVP limits in Phase II RFG, but there are  
13 effective limits in order to achieve the  
14 summertime standards.

15 Q. And what do you mean by "effective  
16 limits"?

17 A. Well, what I mean is there's no  
18 explicit standard as there were set out in Phase  
19 I, there's no given number like 8.2, but that  
20 refiners generally have to hit a fairly  
21 constrained target in order to meet the summer  
22 VOC and also the toxic and NOx emission standards  
23 for Phase II.

24 Q. And are the effective limits less

0070 1 stringent than the Phase I limits we've been  
2 discussing?

3 A. I would say -- let me refer to -- I  
4 discuss this actually in the report, they are  
5 more stringent. I actually discuss this here.  
6 (witness reviewing document.)

7 A. Well, anyway, I discuss the limits at  
8 one place here.

9 BY MR. MCGILL:

10 Q. Are you thinking perhaps of your  
11 second report?

12 A. I guess I am, yes.

13 MR. MCGILL: why don't we mark it.  
14 (Whereupon, Tallett Exhibit Number 2  
15 was marked for identification.)

mt042909.txt

8 of it going through a process of renewal, and  
9 that I actually referred to that in my Suffolk  
10 report.

11 BY MR. MCGILL:

12 Q. And do you recall at what time, at  
13 what time frame --

14 MR. MCGILL: I'd like to go off the  
15 record for a minute. I would like to ask them  
16 how long this is going to --

17 THE VIDEOGRAPHER: The time is 12:25.  
18 We're off the record.

19 (Whereupon, a recess was taken.)

20 THE VIDEOGRAPHER: Back on the record.  
21 The time is 12:30.

22 BY MR. MCGILL:

23 Q. Prior to the break, Mr. Tallett, we  
24 were talking about the opinion that some have

0094 1 expressed questioning whether or not the federal  
2 ethanol tax credit would be renewed.

3 In what context with respect to this  
4 case has that opinion been expressed?

5 A. Well, it's been expressed by myself  
6 and other witnesses in testimony.

7 Q. And when you say you yourself, you've  
8 expressed that previously in Suffolk?

9 A. That's what I'm referring to.

10 Q. I see. Okay.

11 And for the record which was not here  
12 a year and a half ago, what do you recall your  
13 opinion was with respect to the ethanol tax  
14 credit and this renewal?

15 A. Well, I mentioned in my Suffolk report  
16 that the economics of ethanol use were dependent  
17 on the continuation of the tax credit.

18 Q. And did you have an opinion about  
19 whether or not -- did you have an opinion about  
20 the likelihood of its renewal at any given time?

21 A. I believe I did not opine on that.

22 Q. Okay. At this time do you have any  
23 opinion with respect to the likelihood of the  
24 federal ethanol tax credit's renewal at any

0095 1 point during the 1990s?

2 A. Not without going back to information.  
3 I know that Dan Dunbar and I have discussed it  
4 at some stage I think several months ago in  
5 terms of what actually happened when renewals  
6 were enacted, but I would have to go back to  
7 unearth the specifics of that.

8 Q. And you're not expressing an opinion  
9 in the City of New York case on that particular  
10 topic?

11 A. No.

12 Q. Okay. In your second report, the  
13 February 6th report, one of the discussions --  
14 give me a moment. Here it is.

15 On Page 16 of that report, I guess it  
16 actually starts on 15 under the "Key Issues in  
17 This Case" there's a heading "Professor Murphy's  
18 and Professor Sweeney's claims that my report is  
19 'irrelevant' merely add to the train of  
20 Defendants' witnesses who ignore what this case

mt042909.txt

21 is about."

22 would you tell us, what is this case  
23 about?

24 A. The point that I was referring to here  
0096

1 was that several Defendants' witnesses  
2 throughout the case, so these reports here I'm  
3 referring to but also earlier ones, make the  
4 claim that in the Northeast using ethanol in RFG  
5 would have cost more and therefore would have  
6 rendered a given refiner's or company's supply  
7 uncompetitive if that company had chosen to use  
8 ethanol rather than MTBE, and that then they use  
9 that argument to in some way dismiss my report  
10 or reports as, quotes, irrelevant.

11 The point that I was discussing here  
12 was the point that I set out in my Suffolk  
13 report, which was firstly I was never trying to  
14 argue that use of ethanol was in the narrow  
15 context of supplier economics, refining  
16 economics, cost competitive with MTBE in the  
17 Northeast. And what I was fundamentally arguing  
18 is what interestingly Mr. O'Brien actually  
19 referred to in his report, which was that the  
20 view that MTBE should have been removed from the  
21 list of oxygenates, and should not have been on  
22 the table, should not have stayed on the table,  
23 and so that would have created a world where if  
24 the oxygenate standard had remained, the primary

0097  
1 oxygenate to be used would have been ethanol.  
2 In other words, we would have started off in the  
3 world that we've now actually ended up in  
4 basically, so this is 2005, 2006. And that that  
5 is a central issue in this case, rather than the  
6 issue that these other experts are trying to put  
7 forward as a central issue, namely that the  
8 Defendant A or B could not have used ethanol in  
9 the Northeast because it would have been  
10 uncompetitive.

11 Q. So is your point that your opinion  
12 assumes a world where MTBE is not among the  
13 approved oxygenates?

14 A. Yes.

15 Q. How could that have come about?

16 A. Well, I referred in my Suffolk  
17 testimony to various possibilities as to how  
18 that could have come about.

19 Q. Do you recall any as you sit here?

20 A. Yes, in outline.

21 Q. Okay.

22 A. I put forward a, I think what I  
23 referred to almost as a menu of possibilities  
24 that could have been considered had MTBE been

0098  
1 taken off the table. I looked actually at two  
2 time frames; one would have been had MTBE been  
3 taken off the table in the late eighties, in  
4 other words before the Clean Air Act amendments  
5 were formulated, and pointed out that that would  
6 have allowed for additional time for ethanol  
7 supplies to be ramped up.

8 I then also looked at possible

mt042909.txt

24 Q. Tell me why that would, my words not  
0111

1 yours, why would that stimulate ethanol  
2 production?

3 A. The way it worked out was that the  
4 industry reduced using MTBE both in anticipation  
5 of bans, but what it meant was they were no  
6 longer absolutely obligated to continue to put  
7 MTBE into gasoline. And so in, I think it was  
8 May, 2006 when the oxygenate standard came off  
9 there was an increase in the pace of reduction  
10 of MTBE use, there was a spike in ethanol prices  
11 which lasted two or three months, and since it  
12 engendered some imports of ethanol, and since  
13 then ethanol production until a few months ago  
14 has continued to rise.

15 Q. Is it your understanding that industry  
16 chose to add ethanol in order to replace MTBE  
17 because of the bans?

18 A. The other thing is I misspoke a moment  
19 ago, there's a renewable fuel standard, RFS-2,  
20 which was another key factor in this.

21 Q. And tell me, what do you know about  
22 RFS-2?

23 A. Well, there are two renewable fuel  
24 standards, stages if you will.

0112  
1 In the initial stage, which was  
2 enacted a few years ago, the requirement was to  
3 have at least seven and a half billion gallons a  
4 year of renewable fuel, effectively ethanol, in  
5 US gasoline, and then to maintain the proportion  
6 in gasoline over time.

7 The RFS-2 standard came into the  
8 Energy Independence & Security Act of 2007, and  
9 that mandates a much higher target, there's a 36  
10 billion gallons per year target by, I think it's  
11 2023 or maybe a year out, and so that requires  
12 an increasing level of renewable fuels in total,  
13 not just ethanol but bio-fuels, bio-diesel in US  
14 fuel.

15 Q. And would you attribute the production  
16 increases that we've been discussing to have  
17 resulted at least in part from the  
18 implementation of the renewable fuel standards?

19 A. Yes, that's my understanding.

20 Q. Would you agree with me that in the  
21 last fifteen years there have been significant  
22 changes in technology with respect to computing  
23 power?

24 A. Yes.

0113  
1 Q. Would you agree with me there has been  
2 significant changes in the last fifteen to  
3 twenty years with respect to communications  
4 technology?

5 A. Yes.

6 Q. Would you agree with me that there has  
7 been significant increase -- significant changes  
8 in technology in the last fifteen to  
9 twenty years with respect to the availability of  
10 information?

11 A. Yes.



mt042909.txt

12 Q. Have you considered any of those  
13 factors in your evaluation of the ethanol  
14 industry as it exists today versus how it  
15 existed in the early 1990s?

16 A. No. As I said before, I haven't  
17 undertaken an evaluation of that.

18 Q. Okay. And similarly, you have not  
19 undertaken an evaluation of the changes in  
20 construction or operation of ethanol plants in  
21 those two time periods, right?

22 A. Correct.

23 Q. Okay. You also have not taken into  
24 consideration the cost of production and the

0114 1 scale of ethanol facilities in those two time  
2 periods, correct?

3 A. Correct.

4 Q. Do you understand what is meant by the  
5 term "a concentrated industry"?

6 A. In outline terms.

7 Q. What's your understanding of that  
8 term?

9 A. This is, again this is not an area  
10 which I would be in a position to testify. And  
11 I would interpret it as an industry where there  
12 is a high concentration of production, say, with  
13 being or between a relatively small number of  
14 suppliers rather than widely disbursed across a  
15 very large number of suppliers.

16 Q. At the beginning of your answer to  
17 this question you said this is not an area in  
18 which you are -- I don't know that you finished  
19 it, tell me exactly --

20 A. I'm just saying I think here we're  
21 getting into an area where this is more the  
22 bailiwick of an economist, for example, and I'm  
23 not an economist and I'm not testifying as an  
24 economist.

0115 1 Q. Okay. Have you made any study of the  
2 price of ethanol during the 1990s?

3 A. During the 1990s?

4 Q. During the 1990s.

5 A. I used information in the Suffolk  
6 work, I believe, or am I referring back to  
7 Pataki, that was prepared by Mr. Reynolds. I  
8 have not done extensive original work on ethanol  
9 pricing in the '90s.

10 Q. Are you familiar with whether the  
11 price fluctuated during the 1990s?

12 A. I would imagine that it did. I would  
13 have to go back to information to review that.

14 Q. As you sit here, you don't recall how  
15 much or whether it fluctuated during that period  
16 of time?

17 A. I don't have numbers in my head.

18 Q. Okay. What about the price of corn,  
19 have you ever studied the price of corn during  
20 the period of the 1990s?

21 A. No.

22 Q. Okay. Just a moment.  
23 Well, let me ask you without the  
24 reference.

mt042909.txt

1 apparent that there were companies who had  
 2 imported gasoline into ports in and around New  
 3 York Harbor that were not on the Defendants'  
 4 list.

5 Q. Do you recall any?

6 A. There were one or two, I think  
 7 possibly Stockwell was one. There were, I  
 8 recall, some trading companies. There were one  
 9 or two occasional imports in the name of  
 10 financial companies like Bear Stearns. There  
 11 may have been other non-US oil companies as well  
 12 listed.

13 Q. I think in your answer two answers ago  
 14 you used the term "any," and this was in the  
 15 context of defining non-Defendants, you said  
 16 "any other companies that would have supplied  
 17 gasoline," I think was the phrase you used.

18 what do you mean by the term "supplied  
 19 gasoline"?

20 A. I mean companies that participated in  
 21 the supply system such that through  
 22 manufacturing or blending the gasoline or  
 23 otherwise delivering gasoline it arrived into  
 24 the market area of concern.

0122  
 1 Q. Are you including individual service  
 2 station owners in your definition of those who  
 3 supplied gasoline?

4 A. No.

5 Q. Are you including distributors in your  
 6 definition of those that supplied gasoline?

7 A. I would say generally no.

8 Q. Okay. What do you mean by -- you  
 9 qualified that statement and said "generally  
 10 no." Are there some distributors that you are  
 11 including?

12 A. I'd have to look and see, but -- I  
 13 would just have to look and see.

14 Q. I don't fully understand your answer.  
 15 Where would you have to look and see to  
 16 determine your definition of those who supplied  
 17 gasoline?

18 A. Well, the primary focus I acknowledge  
 19 is more on who produced rather than who  
 20 distributed, so you might have somebody that's,  
 21 a company that's activities are mainly  
 22 distribution but also, say, has a terminal where  
 23 it blends gasoline and therefore is a producer  
 24 of gasoline.

0123  
 1 Q. Let's talk a little bit about how  
 2 gasoline is supplied to the County of Queens.  
 3 How is gasoline supplied to the County  
 4 of Queens?

5 A. Short answer is from various sources.

6 Q. Okay. And do you know what the  
 7 primary sources in terms of pipelines or  
 8 terminals are?

9 A. In general, yes. Again this is an  
 10 area where I've not been asked to testify, and I  
 11 don't claim to have detailed the ground level  
 12 knowledge of each pipeline and terminal.

13 Q. Just to clarify that, when you say



mt042909.txt

14 "this area," tell me what you mean by that.  
15 A. I'm sorry, I'm talking about the  
16 details of the supply, the mechanisms, methods,  
17 routes of supply into Queens and the surrounding  
18 area.

19 Q. You understand that not to be an area  
20 in which you are opining; fair statement?

21 A. Yes.

22 Q. Okay. Can you name any of the  
23 pipelines that supply Queens?

24 A. Well, you have -- there's supply, for

0124

1 example comes up, Colonial Pipeline is major one  
2 coming up from the Gulf coast, and you have the  
3 pipeline that's the Sunoco pipeline coming up  
4 from its refineries, those are two of the  
5 pipelines supplying.

6 Q. In the market share report -- and by  
7 the market share report, when I say that I'm  
8 referring of course to Exhibit 3 -- you make  
9 reference to New York Harbor in a number of  
10 places.

11 what do you understand New York Harbor  
12 to be?

13 A. Viewing it from an industry  
14 perspective, I understand it to be the -- as  
15 with the greater harbor area, all the  
16 surrounding New York. The common understanding  
17 in the industry, put it this way, is that it not  
18 only includes the sort of harbor components,  
19 port components that are actually in the State  
20 of New York, but also across the water in  
21 New Jersey, Long Island, and can include Western  
22 Connecticut.

23 Q. In conjunction with Queens, let me hop  
24 back for a minute to Queens, we've talked about

0125

1 the pipelines, you mentioned Colonial, you  
2 mentioned Sunoco, are you familiar with any of  
3 the primary terminals that supply Queens?

4 A. No.

5 Q. Let's hop back to New York Harbor.  
6 Are you familiar with any official  
7 definitions of what New York Harbor is?

8 A. No, although there is a, what am I  
9 trying to say, there is a New York -- there's a  
10 harbor authority, as I understand. But in terms  
11 of official definitions in the oil industry, no.

12 MR. MCGILL: I'd like to mark this.

13 (Whereupon, Tallett Exhibit Number 4  
14 was marked for identification.)

15 BY MR. MCGILL:

16 Q. Mr. Tallett, I have put before you a  
17 document that did not come from your production,  
18 instead it came from the Internet this morning.  
19 And it is from the Internet address as specified  
20 on the bottom, and it's specifically from the  
21 NYMEX website, N-Y-M-E-X.

22 Are you familiar with NYMEX?

23 A. Yes.

24 Q. What are they?

0126

1 A. NYMEX stands for New York Mercantile

mt042909.txt

3 Q. Do you believe any of the Defendants'  
4 experts' reports that you looked at reached that  
5 level of accuracy?

6 A. I cannot answer that question. In  
7 fact, some of the information put out, for  
8 example, by Dr. Burtis indicated a wide range of  
9 variability.

10 In addition, I can't -- the reason I  
11 can't answer the question is I have not been  
12 able to review the calculation of data  
13 computation spreadsheets that were put forward  
14 by any of the witnesses, and it's only by going  
15 into those that one could test the range of  
16 accuracy on certain.

17 Q. As you sit here today not having the  
18 benefit of such an analysis, do you have any  
19 opinion as to whether or not any of the  
20 individual Defendant expert reports is accurate  
21 or not?

22 A. I believe that I haven't been able to  
23 satisfy myself as to the range of accuracy or  
24 uncertainty, that's what I'm saying, so again

0132 1 it's difficult for me to have an opinion unless  
2 I've been able to go into their calculations.

3 Q. So they could be right?

4 A. They could be right, I'm not saying  
5 it's impossible they're not. One of my  
6 concerns, though, which I spelled out in my  
7 report was that wherever you make a series of  
8 assumptions, every time you have an assumption  
9 you have a range of uncertainty, and those tend  
10 to multiply up. So that's something that one  
11 would have to examine.

12 Q. And you yourself did not attempt to  
13 estimate individual market shares in New York  
14 Harbor, correct?

15 A. Correct.

16 Q. And you have not been asked to do so  
17 in this case?

18 A. No.

19 Q. Okay. Earlier we talked about the  
20 definition of New York Harbor for a few minutes.

21 Do you understand New York Harbor to  
22 exclude portions of New York State? Let's stop  
23 there, portions of New York State.

24 A. Exclude, yes.

0133 1 Q. And what portions do they exclude?

2 A. Broadly, the upper portions of New  
3 York State.

4 Q. That we'd just colloquially refer to  
5 as upstate?

6 A. Well, yes, once we're getting beyond  
7 the boroughs of New York City.

8 Q. Okay. And is gasoline supplied to the  
9 areas outside of New York Harbor yet still in  
10 the boundaries of New York State from different  
11 sources than New York Harbor?

12 A. Yes, some of it can be, it's my  
13 understanding.

14 Q. And what's your understanding of those  
15 sources?

mt042909.txt

4 refer to or use the term New York Harbor. The  
5 eastern section of New Jersey and the associated  
6 waterways and roughly as they were enumerated in  
7 this NYMEX document is what I would consider to  
8 be the sort of New Jersey side of New York  
9 Harbor.

10 Q. And, for example, the terminals that  
11 are in Linden and some of the other areas across  
12 the water from New York City, is that what  
13 you're referring to?

14 A. Yes.

15 Q. And what's your understanding of the  
16 purpose of those terminals? Why are they there?

17 A. To feed the local area.

18 Q. And you also mentioned the -- I think  
19 you also mentioned Connecticut. Do I remember  
20 that correctly?

21 A. Yes.

22 Q. Tell me about the portions of  
23 Connecticut you're thinking about.

24 A. I was referring --

0137

1 MR. PLACHE: Objection to form.

2 BY MR. MCGILL:

3 Q. You were referring?

4 A. I was referring to Western  
5 Connecticut.

6 Q. And what specifically in Western  
7 Connecticut?

8 A. Well, there's just a central area of  
9 Western Connecticut. I mean I was referring to  
10 the view that one could define New York Harbor  
11 to include, say, the central area of Western  
12 Connecticut, and also Long Island which is, in  
13 fact, the southern extension of it.

14 Q. Why would one include those areas?

15 MR. PLACHE: Objection to form.

16 A. One reason could be because they are  
17 part of the -- what one might again refer to as  
18 the kind of New York Harbor supply system.

19 BY MR. MCGILL:

20 Q. When we talked about the New Jersey  
21 areas we were talking about, in part we were  
22 talking about the terminals that are present in,  
23 I think your term was Eastern New Jersey.

24 Is there a similar set of terminals in

0138

1 Western Connecticut, or is it largely retail  
2 operations, or can you explain that to me?

3 A. Well, again this is getting into an  
4 area that it's not my area of the case. My  
5 understanding is there are terminals in western  
6 Connecticut, but I'm not testifying on the  
7 detail of those.

8 Q. Sorry to ask you this question again,  
9 but I just want the record to be clear; you're  
10 not opining on this area because it includes  
11 retail? Or why -- what is the genesis of your  
12 last statement?

13 A. It's in part what you said, it's  
14 getting down to the retail level.

15 Q. Anything else?

16 A. Plus that while in the work we do we

mt042909.txt

17 sort of maintain a general knowledge of the  
 18 major distribution supply routes, and I don't  
 19 regard myself as an expert in that I've never  
 20 worked in the distribution end of the business  
 21 itself.

22 Q. Okay. In your discussion of market  
 23 share in your market share report, you refer to  
 24 the analysis done by Mr. Burke, I believe you

0139 refer to it as a ground level analysis.

2 what's a ground level analysis?

3 A. Well, in this context the way I was  
 4 using the term was to make the point that there  
 5 are different, potentially different levels at  
 6 which one could examine the market from anything  
 7 at, what I was using here is the ground level to  
 8 refer to the fact, I understand, that Mr. Burke  
 9 focused in on Queens County specifically, and I  
 10 was referring that in my analogy, if you will,  
 11 to the lowest level, ground level. And then one  
 12 could go to higher or more aggregate levels of  
 13 consideration of the market.

14 Q. So ground level refers to a more  
 15 concentrated geographical area?

16 A. Yes.

17 Q. Okay. I'm looking at Page 10 of your  
 18 expert report where you actually reference the  
 19 words ground level, and you say "it is also not  
 20 an attempt," and this is reading from the, looks  
 21 like the fourth sentence in in the first  
 22 paragraph, "it is also not an attempt to  
 23 establish market share at the 'ground level'.  
 24 Such a 'ground level' approach could have its

0140 own benefits of focusing directly on the  
 2 specific geographical area at issue in the  
 3 case." Let's stop there for a moment.

4 This is what you were just referring  
 5 to, right?

6 A. Yes.

7 Q. You go on and say "I have not been  
 8 asked by Plaintiff to address such an option but  
 9 have focused on methods that apply at broader  
 10 geographic levels and thus the encompass methods  
 11 put forward to date by Defendants' experts."

12 Do you see that?

13 A. Yes.

14 Q. Okay. So your understanding is you  
 15 have not been asked to do a ground level  
 16 analysis?

17 A. Correct.

18 Q. And you have not been asked to do an  
 19 analysis of market share in Queens?

20 A. Specifically in Queens, no.

21 Q. Okay. Or New York Harbor?

22 A. I was not asked to stick to any  
 23 specific definition of geographical area.

24 Q. Okay. What do you understand the

0141 analysis at issue in this case regarding market  
 2 share to be? That was a horrible question. Let  
 3 me ask that again.

4 We've talked about several different

mt042909.txt

5 geographical areas. What do you understand the  
6 appropriate geographical area to be in terms of  
7 the market share in question posed by this case?

8 A. Could you just repeat that?

9 Q. Sure. Maybe I should try it a third  
10 way.

11 What are you supposed to be looking at  
12 here? What's your understanding of your  
13 assignment?

14 A. To -- ultimately to help to try to  
15 move the ball forward to a point where there  
16 would be a methodology for market share that  
17 could be applied to assigned market share, by  
18 which I mean that either it's then applied  
19 because it's been agreed between Plaintiffs and  
20 Defendants, or failing that applied because it's  
21 been ruled by the judge as applied.

22 Q. And in fact, you posit such a method  
23 in this report, do you not?

24 A. Yes.

0142 Q. And what method do you posit?

1 A. I posited a method employing EIA data.

2 Q. And why did you posit that EIA data  
3 should be used?

4 A. I put it forward as another potential  
5 methodology because I examined the methods that  
6 were proposed in the various experts reports  
7 that were available to me at the time, and I had  
8 concerns about those methods, particularly  
9 within the context of the way I was approaching  
10 this, which was we need to come up here with a  
11 methodology as far as I understood needed to,  
12 yes, arrive at aggregate Defendants' market  
13 share; but B, within that needed to identify  
14 each individual Defendant's market share, in  
15 other words my understanding was it was not  
16 adequate just to arrive in the aggregate. And  
17 that we were dealing with a situation where we  
18 therefore had to have a methodology that would  
19 be workable when applied across all Defendants.

20 Q. And the methodology you are suggesting  
21 is to use EIA prime supplier data, correct?

22 A. Yes.

23 Q. What is prime supplier data?

0143 1 A. Prime supplier data is data submitted  
2 to the EIA by entities involved in the supply of  
3 petroleum products within the USA.

4 Q. I just want to make sure I heard it.  
5 It was entities involved?

6 A. I said entities.

7 Q. And who do you understand those  
8 entities to be?

9 A. Well, drawing on EIA's own  
10 documentation, their description of the entities  
11 that they expect to be responding in the Form  
12 782C is refiners, gas plant operators,  
13 importers, and major interstate transporters of  
14 products, I think is the terminology.

15 Q. When you say gas plant operators, what  
16 specifically do you mean?

17 A. I understand that to mean, to refer to



mt042909.txt

9 Q. Correct.

10 A. It would depend on the status of the  
11 entity at the receiving end. In other words, if  
12 that was still Exxon Mobil, I would presume that  
13 they would have to report because otherwise the  
14 volume would be lost. If it was all within one  
15 entity, that volume would be moving into the  
16 State of New York, and if it wasn't reported by  
17 Exxon Mobil it would be missed.

18 Q. And do you understand that it would  
19 identify itself as a refiner in that case?

20 A. I would presume so.

21 Q. Okay. And if Exxon Mobil sold to a  
22 third party, and that third party was not on the  
23 exclusionary list, would they similarly have to  
24 submit Form 782C and identify themselves as a

0162 refiner?

1 MR. PLACHE: Objection to form.

2 A. Yes, that's my understanding.

3 BY MR. MCGILL:

4 Q. And if Exxon Mobil refined gasoline  
5 and sold it to someone who was on the  
6 exclusionary list, let's pick a name, Merrill,  
7 Lynch is on the exclusionary list, would it  
8 similarly have to submit a Form 782C?

9 MR. PLACHE: Objection to form.

10 A. Well, my understanding now, and I want  
11 to clarify a point here, is that Exxon Mobil  
12 would not be the reporting party, it would be in  
13 this instance Merrill, Lynch as Party B.

14 BY MR. MCGILL:

15 Q. Okay. So it's your understanding that  
16 in that case -- let's take it one step further.  
17 Merrill, Lynch then sells that gasoline to  
18 someone who is not on the exclusionary list or  
19 perhaps an independent retailer, is it your  
20 understanding that under that circumstance  
21 Merrill, Lynch would have to submit Form  
22 EIA-782C?

23 A. Yes, it is now my understanding. But

0163 I say "now" because when I prepared my market  
1 share report I had actually interpreted the 782C  
2 as requiring the first party, not the second, to  
3 report, and it wasn't until I saw Mr. O'Brien's  
4 comment that I went and we checked into it. He  
5 is, in fact, correct that it is the second  
6 party, not the first party that would report.

7 Q. And does that change any of your  
8 opinions?

9 A. It could do, yes. It's something that  
10 we only really homed in on yesterday so I  
11 haven't had a chance to reflect on it. And I  
12 think this approach is still -- has merit, I  
13 think it still has value, but I may want to  
14 reconsider the best context in which it could be  
15 used.

16 Q. What do you mean by that?

17 A. Well, the reasons for going for this  
18 approach which I mapped out in the market share  
19 report include its simplicity and its use of  
20 government statistics and its lack of estimation  
21

mt042909.txt

22 within the calculations themselves, and so I  
 23 feel that that still has value. And thinking  
 24 about this question of who reports, is it Party

0164

1 A or Party B, recognizing now that it is Party  
 2 B, not Party A who reports, that does take you  
 3 further down the supply chain, it takes you  
 4 further away from the manufacturer of the  
 5 product.

6 But I think, and as I say, I shall  
 7 reserve judgment on this somewhat for the time  
 8 being, but I think that means that the  
 9 information reported on 782C could well be still  
 10 valuable as, well, partly as a cross-check on  
 11 possible other methodology, but also if anything  
 12 it probably sets a lower bound to the market  
 13 share. Because, if anything, just taking the  
 14 example you just referred to, it could lead to  
 15 an underreporting, more likely it's likely to  
 16 lead to an underreporting of market share, so  
 17 that would set a lower bound to the market  
 18 share.

19 Q. why do you believe it would lead to an  
 20 underreporting?

21 A. Because the Defendants are primarily  
 22 what we might call manufacturers, refiners, and  
 23 so they would more likely be, and this is my  
 24 initial reaction, they would more likely be a

0165

1 Party A than a Party B.

2 Q. By that you mean they would be more  
 3 likely to manufacture a product and sell it to  
 4 someone else rather than purchase a product from  
 5 an original manufacturer?

6 A. More likely, yes. I mean it could  
 7 happen both ways, you do have exchange  
 8 agreements, for example.

9 Q. We've talked at several points about  
 10 the definition of market share, and you have  
 11 just suggested that given what you have learned  
 12 about Form 782C, the utilization of 782C data  
 13 may underreport market share of the Defendants  
 14 in this case.

15 What do you understand the definition  
 16 of market share in this case to be?

17 MR. PLACHE: Objection to form.

18 You can answer.

19 A. I would interpret it as identifying  
 20 ultimately the total volumes of either MTBE or  
 21 MTBE containing gasoline supplied into the  
 22 defined market area, and the division of that  
 23 between -- the share of that is the proportion  
 24 that is attributable to the Defendants.

0166

1 BY MR. MCGILL:

2 Q. Earlier we talked about, I think you  
 3 used the term supply of gasoline in our  
 4 definition of market share.

5 Would you agree with me that one could  
 6 have different market share definitions if one  
 7 looked at the retail level than if one looked at  
 8 the manufacturing level?

9 A. It's possible, yes.



mt042909.txt

23 But you can answer that.  
24 A. Well, as I mentioned earlier, I have

0169  
1 not had time to come up with some considered  
2 opinion, so I reserve the right to reassess my  
3 opinion on that. I mentioned my initial  
4 reaction is that it may tend to underreport.

5 BY MR. MCGILL:  
6 Q. Okay. Do you intend to supplement  
7 your opinion on this point?

8 A. I would need to discuss that with  
9 counsel.

10 Q. Okay. Given your new understanding,  
11 is it your opinion that EIA-782C data is the  
12 method that should be used to calculate market  
13 share in this case?

14 A. I still think it's a method that  
15 should be considered. As I said, I would like  
16 to reserve the option to reconsider my opinion.  
17 But as I mentioned a few minutes ago there are,  
18 I still believe, definite -- there's a definite  
19 value in the 782C information, and my view at  
20 the moment is that it still has a role.

21 Q. Are you prepared as you sit here today  
22 to say that that method should be used to  
23 calculate market share in this case?

24 MR. PLACHE: Objection to form.

0170  
1 You can answer that to the extent you  
2 can answer that.

3 A. Well, the answer is it may be, because  
4 at the moment what I think is lacking is a  
5 clear-cut method that has been presented by the  
6 Defendants in a cohesive way; in other words, a  
7 method that will -- that is proposed by the  
8 Defendants to cover all Defendants has not been  
9 put forward, so there's a big piece missing  
10 here. We've had fragmented responses from some  
11 Defendants, that's very much a partial picture,  
12 and that -- there's been no proposal put on the  
13 table by the Defendants to say we have all sat  
14 down together and we have now agreed between us  
15 that this is the methodology, the single and  
16 comprehensive methodology for every Defendant  
17 that we propose to use, that does not exist at  
18 the moment, and so in part I have to reserve  
19 judgment because that hole is there.

20 BY MR. MCGILL:

21 Q. You yourself also offered a method  
22 that we have been discussing that is utilization  
23 of EIA-782C data. Do you have an opinion based  
24 on your new understanding of whether or not that

0171  
1 method, 782C data, is more or less accurate than  
2 the methods accounted by any of the Defendants  
3 with respect to estimating the market shares in  
4 New York Harbor?

5 A. Well, again, as I mentioned earlier,  
6 I'm not really in a position where I can give a  
7 full answer to that because I haven't been able  
8 to examine the workings of any of the methods  
9 put forward by Defendants.

10 MR. PLACHE: If this is a good time,